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APPENDIX

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1972

No. 72-844

E. E. FALK, INDIVIDUALLY AND AS PARTNER IN
DRUCKER & FALK, ET ALs.,

Petitioners,

v.

PETER J. BRENNAN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Respondent.

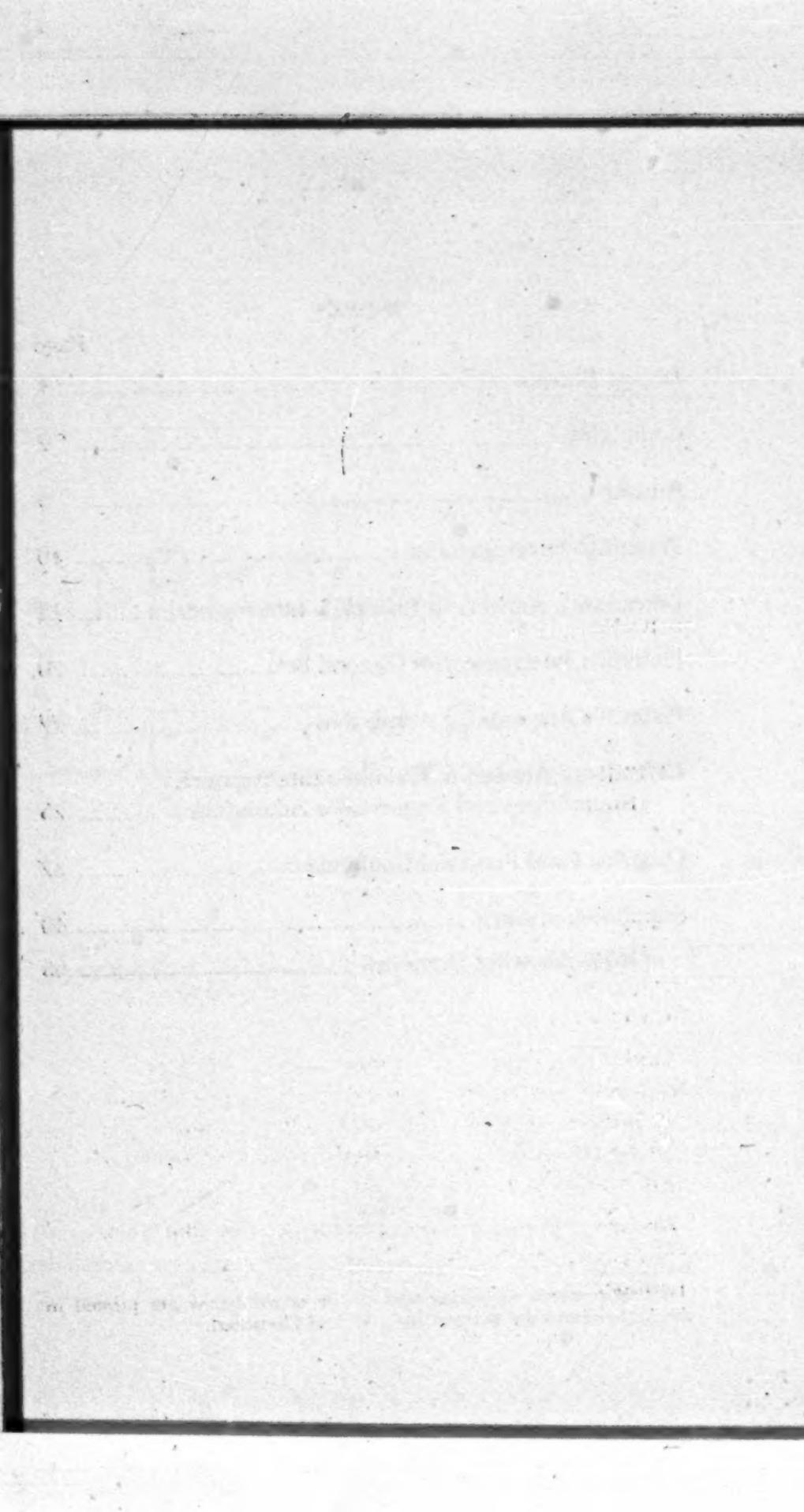
On Writ Of Certiorari To The United States
Court Of Appeals For The Fourth Circuit

Petition For Certiorari Filed December 8, 1972
Certiorari Granted February 26, 1973

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* The previous and Judgment of the courts below are printed in the Appendix to the Petition for a Writ of Certiorari.



DOCKET ENTRIES

Date

PROCEEDINGS

1969

- Jan. 30—Complaint filed and summons issued.
Feb. 24—Answer of all Defendants filed by counsel.
Mar. 10—Petitioners' interrogatories filed.
May 14—Answer to Petitioners' interrogatories, lodged.
July 23—Petitioners' request for admissions filed.
Sept. 12—Answer to Petitioners' interrogatories lodged
5/14/69 filed by leave of Court.
Sept. 12—Answer to Petitioners' interrogatories (second
set) lodged 9/5/69 filed by leave of Court.
Oct. 9—Stipulations of facts, filed.

1970

- Jan. 6—Opinion and Order of Court, that the relief sought
is denied and the suit Dismissed, filed.
Mar. 13—Notice of Appeal filed by United States.

1971

- Mar. 3—Opinion of the United States Court of Appeals,
reversing and remanded to the District Court for further
proceedings.
June 2—Petition for a Writ of Certiorari to the Fourth Cir-
cuit Court of Appeals of the United States, filed.
July 28—Opinion of the District Court for the Eastern
District of Virginia awarding pre-judgment interest.
Oct. 12—Petition for Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit denied.

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1972

Jan. 28—Entry of final Order in the District Court for the Eastern District of Virginia.

Feb. 28—Notice of Appeal filed.

Sept. 11—Per Curiam Opinion of the United States Court of Appeals for the Fourth Circuit affirming the award of pre-judgment interest.

Dec. 8—Petition for a Writ of Certiorari to the Fourth Circuit Court of Appeals of the United States, filed.

1973

Feb. 26—Petition for a Writ of Certiorari granted limited to Questions 2 and 3 presented by the petition.

[Caption omitted]

COMPLAINT

(Filed in U. S. District Court January 30, 1969)

Plaintiff George P. Shultz, Secretary of Labor, United States Department of Labor, brings this action to enjoin defendants E. E. Falk, A. L. Drucker, E. B. Drucker, David Falk, and R. E. Smith from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Fair Standards Act of 1938, as amended (29 U.S.C. *et seq.*), hereinafter referred to as the Act, and to restrain defendants from any withholding of payment of minimum wages and overtime compensation found by the Court to be due to employees under the Act.

I

Jurisdiction of this action is conferred upon this Court by section 17 of the Act.

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II

- (a) Since August 25, 1966, defendants E. E. Falk, A. L. Drucker, E. E. Drucker, David Falk, and R. E. Smith, have been and are partners trading as Drucker & Falk, 131 - 26th Street, Newport News, Virginia, within the jurisdiction of this Court, in the business of selling real estate and insurance and managing rental property.
- (b) Defendant E. E. Falk resides at 27 Garland Drive, Newport News, Virginia, within the jurisdiction of this Court, and since August 25, 1966, has been and is actively engaged in the control and supervision of the operations of Drucker & Falk, 131 - 26th Street, Newport News, Virginia, and acts and since August 25, 1966, has acted directly and indirectly in the interest of said Drucker & Falk in relation to its employees.
- (c) Defendant A. L. Drucker resides at 511 Chesapeake Avenue, Newport News, Virginia, within the jurisdiction of this Court, and since August 25, 1966, has been and is actively engaged in the control and supervision of the operations of Drucker & Falk, 131 - 26th Street, Newport News, Virginia, and acts and since August 25, 1966, has acted directly and indirectly in the interest of said Drucker & Falk in relation to its employees.
- (d) Defendant E. B. Drucker resides at 23 Garland Drive, Newport News, Virginia, within the jurisdiction of this Court, and since August 25, 1966, has been and is actively engaged in the control and supervision of the operations of Drucker & Falk, 131 - 26th Street, Newport News, Virginia, and acts and since August 25, 1966, has acted directly and indirectly in the interest of said Drucker & Falk in relation to its employees.
- (e) Defendant David Falk resides at Kings Mill Dairy Farm, Williamsburg, Virginia, within the jurisdiction of

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this Court, and since August 25, 1966, has been and is actively engaged in the control and supervision of the operations of Drucker & Falk, 131 - 26th Street, Newport News, Virginia, and acts and since August 25, 1966, has acted directly and indirectly in the interest of said Drucker & Falk in relation to its employees.

(f) Defendant R. E. Smith resides at 14 Garland Drive, Newport News, Virginia, within the jurisdiction of this Court, and since August 25, 1966, has been and is actively engaged in the control and supervision of the operations of Drucker & Falk, 131 - 26th Street, Newport News, Virginia, and acts and since August 25, 1966, has acted directly and indirectly in the interest of said Drucker & Falk in relation to its employees.

III

The business activities of the defendants, as described herein, are and since August 25, 1966, have been related and performed through unified operation and common control for a common business purpose, and constitute and since August 25, 1966, have constituted an enterprise within the meaning of section 3(r) of the Act.

IV

(a) During the period since August 25, 1966, the total annual gross volume of sales of the enterprise referred to and described in the preceding paragraph has been not less than one million dollars (\$1,000,000), and some of the defendants' establishments have had at least two or more employees engaged in commerce or in the production of goods for commerce. Thus, each such establishment, since August 25, 1966, has been and is an enterprise engaged in

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commerce or in the production of goods for commerce within the meaning of section 3(s)(3) of the Act, as amended by the Fair Labor Standards Amendments of 1961, 75 Stat. 65.

(b) During the period since February 1, 1967, the annual gross volume of sales made or business done by the enterprise referred to and described in paragraph III of this Complaint has been not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated), and it has and since February 1, 1967, has had two or more employees engaged in commerce or in the production of goods for commerce. By virtue of the foregoing, defendants' activities constitute and since February 1, 1967, have constituted an enterprise engaged in commerce or in the production of goods for commerce within the meaning of sections 3(r) and 3(s)(1) of the Act, as amended by the Fair Labor Standards Amendments of 1966, 80 Stat. 830.

V

(a) During the period since August 25, 1966, the defendants have repeatedly violated, and are violating, the provisions of sections 6(a)(1) and 15(a)(2) of the Act by employing employees in enterprises engaged in commerce or in the production of goods for commerce and by paying them wages at rates less than \$1.25 an hour during the period from August 25, 1966, to February 1, 1967; less than \$1.40 an hour during the period from February 1, 1967, to February 1, 1968; and less than \$1.60 an hour thereafter.

(b) During the period since February 1, 1967, the defendants have repeatedly violated, and they are violating, the provisions of sections 6(b) and 15(a)(2) of the Act by employing employees in an enterprise engaged in commerce

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or in the production of goods for commerce and by paying such employees wages at rates less than \$1 an hour during the period from February 1, 1967, to February 1, 1968, and at rates less than \$1.15 an hour during the period since February 1, 1968.

VI

(a) During the period since August 25, 1966, the defendants have repeatedly violated, and they are violating, the provisions of sections 7(a)(1) and 15(a)(2) by employing many of their employees in enterprises engaged in commerce or in the production of goods for commerce for hours in excess of 40 a week without compensating them for such excess hours at rates not less than one and one-half times the regular rates at which they were employed.

(b) During the period since February 1, 1967, the defendants have repeatedly violated, and they are violating, the provisions of sections 7(a)(2) and 15(a)(2) of the Act by employing many of their employees in an enterprise engaged in commerce or in the production of goods for commerce, for hours in excess of 44 a week during the period from February 1, 1967, to February 1, 1968, and for hours in excess of 42 a week during the period since February 1, 1968, without compensating them for such excess hours at rates not less than one and one-half times the regular rates at which they were employed.

VII

(a) During the period since August 25, 1966, the defendants have repeatedly violated, and they are violating, the provisions of sections 11 and 15(a)(5) of the Act, in that they have failed to make, keep, and preserve adequate and accurate records of their employees and of the wages,

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hours, and other conditions and practices of employment maintained by them as prescribed by regulations issued pursuant to section 11(c) of the Act and found in Title 29, Chapter V, Code of Federal Regulations, Part 516, in that the records kept by the defendants fail to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek by many of their employees.

(b) During the period since August 25, 1966, the defendants have repeatedly violated, and they are violating, the provisions of sections 11 and 15(a)(5) of the Act, in that they have failed to post and keep posted, at the places of employment of their employees, a notice pertaining to the applicability of the Act, as prescribed by regulations issued pursuant to section 11(c) of the Act and found in Title 29, Chapter V, Code of Federal Regulations, Part 516.4.

VIII

Section 17 of the Act expressly provides that the District Courts of the United States shall have jurisdiction to restrain violations of section 15 of the Act, including, in the case of violations of section 15(a)(2), the restraint of any withholding of payment of minimum wages and overtime compensation found by the Court to be due to employees under the Act.

Wherefore, cause having been shown, plaintiff prays judgment permanently enjoining and restraining defendants, their agents, servants, employees and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Act, and restraining the defendants from continuing to withhold any payment of minimum wages

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and overtime compensation found by the Court to be due to their employees under the Act, together with interest at six percent a year from the date of the withholding, and for such further relief as the Court may deem appropriate.

**Edward B. Friedman
Acting Solicitor of Labor**

**Jeter S. Ray
Regional Attorney**

**Sylvia S. Ellison
Chief Trial Attorney**

**William H. Horkan
Deputy Chief Trial Attorney**

**Thomas E. Korson
Attorney**

Attorneys for Plaintiff

Of Counsel

**C. V. Spratley, Jr.
United States Attorney**

**By Roger T. Williams
Assistant United States Attorney**

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(Captioned Omitted)

ANSWER

(Filed in U. S. District Court February 24, 1969)

This day come the defendants, E. E. Falk, A. L. Drucker, E. B. Drucker, David Falk and R. E. Smith, individually and as partners in Drucker & Falk, and file this their individual and collective Answer to the Complaint filed herein, and do deny the allegations of subject Complaint and in that regard doth say as follows:

1. That they do admit the allegations of Paragraph I.
2. That they do admit the allegations of Paragraph II.
3. That they do not deny the allegations of Paragraph III.
4. That they do deny the allegations of Paragraph IV.
5. That they do deny the allegations of Paragraph V.
6. That they do deny the allegations of Paragraph VI.
7. That they do deny the allegations of Paragraph VII.
8. That they do deny any allegations of violation as alleged in said Complaint.
9. That they do deny the prayer for relief, but do assert that even if there were grounds for subject prayer, it is barred by the statute of limitations.

Such other defenses as may arise on or before trial of this cause.

E. E. Falk,
A. L. Drucker,
E. B. Drucker,
David Falk and
R. E. Smith

Herbert V. Kelly, p.d.
Jones, Blechman, Woltz & Kelly
227 27th Street
Newport News, Virginia 23607

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(Caption Omitted)

PLAINTIFF'S INTERROGATORIES

(Filed in U. S. District Court March 10, 1969)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff requests that, within 15 days of service hereof, defendants answer in writing and under oath the following interrogatories, which are continuing in nature and which, unless otherwise specified, pertain to the period since January 30, 1967.

1. Identify the buildings which have been and are being operated or managed by the defendants, including the locations, by street address and city, town or village, of all such buildings, the owners of such buildings and their addresses.
2. Identify the buildings which have been and are being operated or managed by the defendants which have telephone switchboards operated by one or more persons paid by the defendants on their own account or as agents for the owner of the building.
3. Identify the buildings which have been and are being operated or managed by the defendants in which mail is distributed, or otherwise delivered, by one or more persons paid by the defendants on their own account or as agents of the owner of the building, to the tenants or to boxes or pigeonholes assigned to the tenants of such buildings.
4. Identify the buildings which have been and are being operated or managed by the defendants where one or more persons paid by the defendants on their own account or as agents of the owner of the building regularly receive or send correspondence pertaining to the defendants' business or to the business of the building owner across state lines.

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5. Identify the buildings which have been and are being operated or managed by the defendants where one or more persons paid by the defendants on their own account or as agents of the owner of the building regularly use as part of their duties at such buildings telephone facilities in communications across state lines.

6. Identify the buildings which have been and are being operated or managed by the defendants where persons paid by the defendants on their own account or as agents for the owner of the building regularly order or receive goods, materials, or supplies used in the operation, management, or maintenance of the buildings operated by the defendants, if such goods, materials, or supplies have been shipped across state lines.

7. State the gross volume of rentals collected by the defendants trading as Drucker & Falk for each quarter since January 1, 1966.

8. State the gross commissions or fees received by the defendants in the operation or management of buildings for each quarter since January 1, 1966.

9. Who hires the employees working in the buildings operated or managed by the defendants?

10. Who supervises the employees working in the buildings operated or managed by the defendants?

11. Who has authority to fire the employees working in the buildings operated or managed by the defendants?

12. What is the basis for payment to the defendants by the owners of the buildings operated or managed by the defendants?

13. Are the employees working in the buildings operated or managed by the defendants paid by cash or by check,

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and if by check, whose check? How are the payments delivered and by whom?

Sylvia S. Ellison
Chief Trial Attorney

William H. Horkan
Deputy Chief Trial Attorney

Thomas E. Korson
Attorney

Attorneys for Plaintiff
United States Department of
Labor

Of Counsel

C. V. Spratley, Jr.
United States Attorney

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(Caption Omitted)

ANSWER TO PLAINTIFF'S INTERROGATORIES

(Filed in U. S. District Court May 12, 1969)

This day come the defendants, E. E. Falk, A. L. Drucker, E. B. Drucker, David Falk and R. E. Smith, individually and as partners in Drucker & Falk, and file this their individual and collective Answer to Plaintiff's Interrogatories, as follows:

1. In answer to question number one, the apartment projects managed by the defendants are as follows:

(a) Buildings known as "Andover" owned by Andover Investment Company, located at 2501 East Little Creek Road, Norfolk, Virginia 23518.

(b) Buildings known as "Armstrong" owned by Armstrong Investment Company, 3816 Kecoughtan Road, Hampton, Virginia 23369.

(c) Buildings known as "Bel Meade" owned by Bel Meade Investment Company, 2506 Atwell Drive, Richmond, Virginia 23234.

(d) Buildings known as "Bolling" owned by Bolling Investment Company, 942 Rockbridge Avenue, Norfolk, Virginia 23508.

(e) Buildings known as "Bondale" owned by Bondale Investment Company, 7603 Bondale Avenue, Norfolk, Virginia 23505.

(f) Buildings known as "Chamberlayne Gardens" owned by Chamberlayne Gardens, Inc., 4301 Chamberlayne Avenue, Richmond, Virginia 23227.

(g) Buildings known as "Chesapeake" owned by Chesapeake Investment Company, 3816 Kecoughtan Road, Hampton, Virginia 23369.

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- (h) Buildings known as "Dresden Arms" owned by Dresden Arms Associates, 616 Dresden Drive, Newport News, Virginia 23601.
- (i) Buildings known as "Lakeshore" owned by Lakeshore Associates, 19 Lakeshore Drive, Hampton, Virginia 23366.
- (j) Buildings known as "Peninsula" owned by Peninsula Investment Company, 3816 Kecoughtan Road, Hampton, Virginia 23369.
- (k) Buildings known as "Pleasant Manor" owned by Pleasant Manor Corporation, 3201 York Street, Hampton, Virginia 23361.
- (l) Buildings known as "Presidential Apartments" owned by Presidential Apartment Associates, 616 Dresden Drive, Newport News, Virginia 23601.
- (m) Buildings known as "Presidential" owned by Presidential Investment Company, 616 Dresden Drive, Newport News, Virginia 23601.
- (n) Buildings known as "Southampton" owned by Southampton Investment Company, 3816 Kecoughtan Road, Hampton, Virginia 23369.
- (o) Buildings known as "Warwick Gardens" owned by Warwick Gardens, Incorporated, 614 Peninsula Drive, Newport News, Virginia 23605.
- (p) Buildings known as "Warwick Marshall" owned by Warwick Marshall, Incorporated, 614 Peninsula Drive, Newport News, Virginia 23605.
- (q) Buildings known as "Executive Suite" owned by Greenwood Company, Incorporated, 2705 West Mercury Boulevard, Hampton, Virginia 23366.
- (r) Buildings known as "Ivy-Dresden" owned by Ivy-Dresden Investment Company, 616 Dresden Drive, Newport News, Virginia 23601.

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- (s) Buildings known as "Mercury" owned by Mercury Investment Company, 1601 Pennwood Drive, Hampton, Virginia 23366.
- (t) Buildings known as "Hampton" owned by Hampton Associates, 2717 Willard Road, Richmond, Virginia.
- (u) Buildings known as "Glenwood" owned by Glenwood Investment Company, 2705 Byron Street, Richmond, Virginia 23223.
- (v) Buildings known as "Sewell", located at 400 West Little Creek Road, Norfolk, Virginia 23505, owned by Sewell Properties Company, 138 - 78th Avenue, Flushing, New York 11367.
- (w) Buildings known as "Lakeshore Village" owned by Lakeshore Village Associates, 2717 Willard Road, Richmond, Virginia 23229.
- (x) Buildings known as "Shell Gardens" owned by Mr. Abraham Okun, 135 Forsythe Road, Norfolk, Virginia 23505.
- (y) Buildings known as "Queens Terrace" owned by Queens Terrace Associates, Massey Building, Fourth and Main Streets, Richmond, Virginia 23219.
- (z) Buildings known as "West County Townhouses" owned by West County Townhouse Apartments, 20 Mellen Street, Hampton, Virginia 23363.
- (aa) Buildings known as "Plaza Apartments" owned by Arlington Hall Realty Company, 11295 Keystone Island Drive, North Miami, Florida 33162.
- (bb) Buildings known as "Newsome" owned by Newsome Townhouses Apartments, 2013 Cunningham Drive, Hampton, Virginia 23366.
- (cc) Buildings known as "Robin Hood", located at 5500 Robin Hood Road, Norfolk, Virginia 23513,

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owned by Virginia Construction Corporation, Suite 203, 117 East 59th Street, New York, New York 10022.

(dd) Buildings known as "Bel Aire" owned by Bel Aire Investment Corporation, 1513 East Little Creek Road, Norfolk, Virginia 23518.

2. There are no buildings which are being operated or managed by the defendants which have telephone switchboards operated by one or more persons paid by the defendants on their own account or as agents for the owner of the building.
3. There are no buildings which have been or are being operated or managed by the defendants in which mail is distributed, or otherwise delivered, by one or more persons paid by the defendants on their own account or as agents of the owner of the building, to the tenants or to boxes or pigeonholes assigned to the tenants of such buildings.
4. The only buildings operated or managed by the defendants where there is correspondence across state lines are Sewell, Robin Hood and Plaza, as named above, where information is mailed to out-of-state owners.
5. There are no buildings operated or managed by the defendants with regular communication facilities across state lines. In the three cases mentioned in answer No. 4 above, there is some telephone communication.
6. At none of the buildings which have been or are being operated or managed by the defendants do the defendants or their agents regularly order or receive goods, materials or supplies used in the operation, management or maintenance of the buildings which have been shipped across the state lines. Any regular ordering is made through local

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suppliers and the origin of their goods is not known by the defendants.

7. Gross volume of rentals collected by the defendants is as follows:

1966

1st Quarter	\$1,311,452.28
2nd Quarter	1,330,638.02
3rd Quarter	1,512,091.16
4th Quarter	1,657,437.91
Total	<u>\$5,811,619.37</u>

1967

1st Quarter	\$1,769,010.67
2nd Quarter	1,818,519.05
3rd Quarter	1,998,450.17
4th Quarter	2,079,620.97
Total	<u>\$7,725,600.86</u>

1968

1st Quarter	\$2,092,237.23
2nd Quarter	2,144,449.31
3rd Quarter	2,191,971.28
4th Quarter	2,208,428.22
Total	<u>\$8,607,086.04</u>

8. Gross commissions or fees received by the defendants are as follows:

1966

1st Quarter	\$ 81,119.54
2nd Quarter	83,730.92
3rd Quarter	93,388.34
4th Quarter	101,827.02
Total	<u>\$360,065.82</u>

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1967

1st Quarter	99,057.65
2nd Quarter	104,264.86
3rd Quarter	116,673.69
4th Quarter	114,231.95
Total	\$434,228.15

1968

1st Quarter	\$114,992.04
2nd Quarter	112,867.79
3rd Quarter	117,005.78
4th Quarter	117,891.89
Total	\$462,757.50

9. Employees working in buildings operated or managed by the defendants are hired for the owner's account by either of the following, depending upon the employment:

Executive Director, Management Department

Assistant Executive Director, Management Department

Area Manager

Project Manager

Maintenance Superintendent

10. Employees working in the buildings are supervised normally by the Maintenance Superintendent or Project Manager for the project.

11. Employees discharged are normally discharged by the Maintenance Superintendent for the particular project.

12. Payment to the defendants on buildings managed or operated by the defendants is on a commission basis on rents collected.

13. Employees working in buildings operated or managed by the defendants are paid from a special payroll ac-

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count which is funded by checks drawn weekly on the owner's account and payment is made through this account by Drucker & Falk by check.

E. E. Falk, A. L. Drucker, E. B. Drucker, David Falk and R. E. Smith, Individually and as partners in Drucker & Falk

**E. E. Falk
A. L. Drucker
E. B. Drucker
David Falk
R. E. Smith**

**Herbert V. Kelly, p.d.
Jones, Blechman, Woltz & Kelly
227 - 27th Street
Newport News, Virginia 23607**

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(Caption Omitted)

PLAINTIFF'S INTERROGATORIES

(SECOND SET)

(Filed in U. S. District Court July 23, 1969)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff requests that, within 15 days hereof, defendants answer in writing and under oath the following interrogatories, which are continuing in nature and which, unless otherwise specified, pertain to the period since January 30, 1967.

14. With reference to defendants' answer to interrogatory 1, does the list of buildings contained in that answer include all buildings which defendants have managed at any time during the period since January 30, 1967, or does it merely include the buildings which the defendants are managing at the present time? If the list does not include buildings which the defendants managed during some point in the period from January 30, 1967, but which the defendants are not currently managing, state the name of the building or buildings and list the address of each such building or buildings.

15. With reference to defendants' answer to interrogatory 4, state the frequency with which correspondence or other information (pertaining to the buildings mentioned in defendants' answer to interrogatory 4) is transmitted across state lines, and state whether the employees engaged in transmitting such information or correspondence are employed at the buildings or at defendants' offices located at 131 - 26th Street, Newport News, Virginia.

16. With reference to defendants' answer to interrogatory 5, state the frequency of the communication across

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state lines mentioned therein, and list the employees who were and are so engaged in such interstate communications.

17. With reference to defendants' answer to interrogatory 6, list the names and addresses of all your suppliers during the period since January 30, 1966, and list all the supplies which you use and since January 30, 1966, have used in the operation or management of the buildings listed in defendants' answer to interrogatory 1 or any other building. Indicate which supplies are obtained from which suppliers.

18. Are the personell mentioned in defendants' answers to interrogatories 9, 10, and 11 employees of the defendants trading as Drucker Falk? In any event, list, by name and home address, each person who holds any of the positions mentioned in defendants' answers to interrogatories 9, 10, and 11.

19. List all the business activities in which the defendants, trading as Drucker & Falk, are and since January 1, 1966, have been engaged.

**Roger T. Williams
Assistant U. S. Attorney**

**Sylvia S. Ellison
Chief Trial Attorney**

**William H. Horkan
Deputy Chief Trial Attorney**

**Thomas E. Korson
Attorney**

(Caption Omitted)

PLAINTIFF'S REQUESTS FOR ADMISSIONS

(Filed in U. S. District Court July 23, 1969)

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, plaintiff requests that, within 10 days hereof, defendants admit, in writing and under oath, the truth of the following statements, which are continuing in nature and which, unless otherwise specified, pertain to the period since January 30, 1967.

1. With respect to defendants' management of the buildings listed in defendants' answer to interrogatory 1 (and to the defendants' management of any other building), the defendants, trading as Drucker & Falk, and not the owners of the buildings, perform the following functions:
 - (a) advertising for tenants to occupy the buildings
 - (b) hiring the employees who work at the buildings
 - (c) firing the employees who work at the buildings
 - (d) supervising the employees who work at the buildings
 - (e) renting the apartments in the buildings
 - (f) collecting the rent from the tenants
 - (g) making repairs at the buildings
 - (h) arranging with persons (other than the owners of the building) to have repairs made at the buildings
 - (i) payment of utility bills for the buildings
 - (j) payment of mortgage payments where applicable.

If any of the items listed above are performed or paid for

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by the defendants trading as Drucker & Falk as agent for the owner of the building, please so indicate with respect to each item.

2. Defendants regularly deal with the following insurance companies, whose main offices are located in the locations indicated:

- (a) American Casualty Company
Reading, Pennsylvania
- (b) Kemper Insurance Company
Summit, New Jersey
- (c) Central Mutual Insurance Company
Van Wert, Ohio
- (d) Pawtucket Mutual Insurance Company
Pawtucket, Rhode Island

Please admit or deny with respect to each specific item above.

3. At defendants' office located at 131 - 26th Street, Newport News, Virginia, at least two employees are and since January 30, 1966 have been engaged, as a regular part of their duties each week, in handling, preparing, mailing, or otherwise working on insurance policies or other materials for transmission across state lines to each of the insurance companies mentioned in Request for Admissions 2. Please admit or deny with respect to each insurance company mentioned in Request for Admissions 2.

4. At Robin Hoods apartments (as identified in defendants' answer to interrogatory 1, part cc), the defendants, trading as Drucker & Falk, have collected rents in excess of one million dollars per year during the period since January 30, 1967.

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5. Defendants, trading as Drucker & Falk, have, since January 30, 1967, considered their employees at Robin Hoods apartments to be covered by the provisions of the Fair Labor Standards Act of 1938, as amended by the Fair Labor Standards Amendments of 1961 (75 Stat. 65) and have, accordingly, compensated such employees at the rates prescribed by the Fair Labor Standards Amendments of 1961.

6. As a regular incident of their management of the buildings mentioned in defendants' answer to interrogatory 1 (and as a regular incident to defendants' management of any other building), defendants, trading as Drucker & Falk, repair (or cause to be repaired) parts for plumbing, heating, and airconditioning units.

7. The plumbing, heating, and airconditioning parts mentioned in Request for Admissions 6 are received by the defendants after the said parts have moved across state lines.

8. (a) In their newspaper advertisements for tenants to occupy apartment buildings which manage, the defendants mention their trade names but do not mention the name of the owner or owners of the apartment building.

(b) This practice has been in effect during the period since January 30, 1967.

Roger T. Williams
Assistant U. S. Attorney

Sylvia S. Ellison
Chief Trial Attorney

William H. Horkan
Deputy Chief Trial Attorney

Thomas E. Korson
Attorney

(Caption Omitted)

**ANSWER TO PLAINTIFF'S INTERROGATORIES
(SECOND SET)**

(Filed in U. S. District Court August 20, 1969)

This day come the defendants, E. E. Falk, A. L. Drucker, E. B. Drucker, David Falk and R. E. Smith, individually and as partners in Drucker & Falk, and file this, their individual and collective Answer to Plaintiff's Interrogatories (Second Set), as follows:

14. The answers listed in Interrogatories #1 did list rentals managed during period since January, 1967.

15. Correspondence mentioned in Interrogatories #4 did not go across state lines except where there be out-of-state ownership as previously referred to and there, operating statements once per month and frequent occupancy reports did go to owners.

16. In answer to Interrogatories #16 the telephone communications would be approximately once per month normally by the manager of the project.

17. To completely answer this question would take an enormous amount of research and then probably would not completely answer same; however, major suppliers are as follows:

Paint—Hampton Paint Company, Patterson Ave.,
Hampton, Va. C. A. Nash, 732 Granby Street, Norfolk, Va.

Plumbing & Heating Supplies—Noland Company,
2600 Warwick Boulevard, Newport News, Virginia

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Fuel—Humble Oil Company, Terminal Avenue, Newport News, Virginia, Virginia Electric & Power Co., G. Street, Newport News, Virginia

Carpentry Supplies—R. F. Slaughter Lumber Company, 50 N. Mallory, Hampton, Virginia

18. The personnel mentioned in Interrogatories 9, 10 and 11 are not trading as Drucker & Falk, and their names and addresses are as shown on the attached list.
19. Drucker & Falk since January 1966 has been engaged in real estate brokerage, subdivision development, real estate management and insurance business.

ANSWERS TO REQUESTS FOR ADMISSIONS

This day came the defendants and file this, their answers to Request for Admissions, and in answer do say as follows:

1. That they do deny that Drucker & Falk as such perform all of the activities set forth in paragraph 1 in Request for Admissions and do aver that much of this work is performed by employees located on the project, hired by Drucker & Falk as agents for owners and for the owners' account or by persons previously hired by them as Agent for the Owners' account. All such employees are employees of the individual project.
2. That they do admit the statement contained in paragraph 2.
3. That they do admit allegations of paragraph 3.
4. That they do admit that Robinhood Apartments does collect its rent as stated but such rents are collected by employees of the apartments who are employees of the owners of subject apartment project.

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5. Statement contained in Request for Admissions 5 is correct except such employees are employees of the project.
6. Statement contained in request for Admission 6 is incorrect.
7. Defendants are not aware of the source of equipment or parts mentioned in request for Admission 7.
8. Request for Admission 8(A) is incorrect since the name of the apartment project advertised is normally the name of the project.

E. E. Falk, A. L. Drucker, E. B. Drucker, David Falk and R. E. Smith, individually and as partners in Drucker & Falk

**E. E. Falk
A. L. Drucker
E. B. Drucker
David Falk
R. E. Smith**

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- Executive Director*—Management Dept. — Richard E. Smith
14 Garland Court
Newport News, Va. 23606
- Ast. Executive Director*—Mgmt. Dept. — Jarvis W. Edwards
3406 Custer Court
Hampton, Va. 23366
- Andover*—Area Manager — G. C. Wood
5412 Princess Anne Road
Virginia Beach, Va. 23462
- Maintenance Supt. — Frank Caprio
2517 E. Little Creek Road
Norfolk, Va. 23518
- Armstrong*—Area Manager — Mrs. Christine Hill
29 Lancaster Terrace
Hampton, Va. 23366
- Maintenance Supt. — T. J. Lane
16 Robert Bruce Road
Poquoson, Va.
- Bel Meade*—Area Manager — F. O. Keil
1908 Seddon Road
Richmond, Va. 23227
- Maintenance Supt. — Harry M. Let, Sr.
2402 Yorktown Avenue
Richmond, Va. 23234
- Bolling*—Project Manager — R. O. Osmond
520 Biltmore Road
Norfolk, Va. 23505
- Maintenance Supt. — Thompson Sellers
9569 - 20th Bay Street
Norfolk, Va. 23518
- Bondale*—Area Manager — G. C. Wood
5412 Princess Anne Road
Virginia Beach, Va. 23462
- Maintenance Supt. — A. L. Paolilli
2500 Wyoming Avenue
Norfolk, Va. 23513
- Chamberlayne*—Area Manager — F. O. Keil
1908 Seddon Road
Richmond, Virginia 23227
- Maintenance Supt. — C. K. Topp
4308 Old Broad Road
Apt. #2
Richmond, Virginia 23227

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Chesapeake—Area Manager

— Mrs. Christine Hill
29 Lancaster Terrace
Hampton, Virginia 23366

Maintenance Supt. — James Young
618 Dallas Court
Hampton, Virginia 23369

Dresden Arms—Area Manager

— Jacob Drucker
78-D Elizabeth Road
Hampton, Virginia 23369

Maintenance Supt. — R. Fitzgerald
1209 Tyler Avenue
Newport News, Va. 23601

Lakeshore—Area Manager

(No Longer Manager by D & F)

— Larry W. Trent
University Apts. #45
Greenwood Drive
Johnson City, Tennessee

Maintenance Supt. — Roscoe Gardner
36 Twin Lakes Drive
Hampton, Virginia 23366

Peninsula—Area Manager

— Mrs. Christine Hill
29 Lancaster Terrace
Hampton, Virginia 23366

Maintenance Supt. — T. J. Lane
16 Robert Bruce Road
Poquoson, Virginia

Pleasant Manor—Maintenance Supt.

— W. A. Ross
980 N. King Street
Hampton, Virginia 23369

Presidential Apartments—Area Manager

— Jacob Drucker
78-D Elizabeth Road
Hampton, Virginia 23369

Maintenance Supt. — R. McPherson
16 Penwood Drive
Hampton, Virginia 23366

Presidential Investment—Area Manager

— Jacob Drucker
78-D Elizabeth Road
Hampton, Virginia 23369

Maintenance Supt. — R. McPherson
16 Penwood Drive
Hampton, Virginia 23366

Southampton—Area Manager

— Mrs. Christine Hill
29 Lancaster Terrace
Hampton, Virginia 23366

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	Maintenance Supt. — T. J. Lane 16 Robert Bruce Road Poquoson, Virginia
Warwick Gardens—Project Manager	— W. L. Edwards 128 Cambridge Place Hampton, Virginia 23369
	Maintenance Supt. — John Davis 5204 Arlington Avenue Newport News, Va. 23605
Warwick Marshall—Project Manager	— W. L. Edwards 128 Cambridge Place Hampton, Virginia 23369
	Maintenance Supt. — John Davis 5204 Arlington Avenue Newport News, Va. 23605
Executive Suite—None	
Ivy-Dresden—Area Manager	— Jacob Drucker 78-D Elizabeth Road Hampton, Virginia 23369
	Maintenance Supt. — R. Fitzgerald 1209 Tyler Avenue Newport News, Va. 23601
Mercury West—Maintenance Supt.	— Paul Sutherland 1601 Pennwood Drive Apt. C Hampton, Va. 23366
Hampton Associates—Area Manager (No Longer Managed by D & F)	— Larry W. Trent University Apts. #45 Greenwood Drive Johnson City, Tennessee
	Maintenance Supt. — Roscoe Gardner 36 Twin Lakes Drive Hampton, Virginia 23366
Glenwood—Area Manager	— F. O. Keil 1908 Seddon Road Richmond, Virginia 23227
	Maintenance Supt. — Fred Johnson Rt. #2, Box A39 Dunnsville, Virginia
Sewell—Area Manager	— G. C. Wood 5412 Princess Anne Road Virginia Beach, Va. 23462

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	Maintenance Supt. — A. L. Paolilli 2500 Wyoming Avenue Norfolk, Va. 23513
Lakeshore Village—Area Manager (No Longer Managed by D & F)	— Larry W. Trent University Apts. #45 Greenwood Drive Johnson City, Tennessee
	Maintenance Supt. — Roscoe Gardner 36 Twin Lakes Drive Hampton, Virginia 23366
Shell Gardens—None	
Queen's Terrace—Area Manager (No Longer Managed by D & F)	— Larry W. Trent University Apts. #45 Greenwood Drive Johnson City, Tennessee
	Maintenance Supt. — William Palmer 188 Michigan Drive Hampton, Virginia
West County—Area Manager	— Mrs. Christine Hill 29 Lancaster Terrace Hampton, Virginia 23366
	Maintenance Supt.—None
Plaza—Area Manager	— G. C. Wood 5412 Princess Anne Road Virginia Beach, Va. 23462
	Project Manager — B. W. Scott 124 #3 Palm Beach Place Virginia Beach, Va. 23452
	Maintenance Supt. — Robert L. Tyler, Sr. 169 Dillon Drive, Apt. #3 Virginia Beach, Va. 23452
Newsome—Project Manager	— W. L. Edwards 128 Cambridge Place Hampton, Virginia 23369
	Maintenance Supt.—None
Robin Hood—Project Manager	— R. Maurer 5527 Robin Hood Road Norfolk, Va. 23513
	Maintenance Supt. — Lewis Griffith 5424 W. Robin Hood Road Norfolk, Va. 23513

NOTE: Area Managers, Executive Director and Asst. Executive Director are all Drucker & Falk Employees.

ORDER ON FINAL PRE-TRIAL CONFERENCE

(Filed in U. S. District Court September 12, 1969)

In conformity with the Local Rules of this Court relating to pre-trial procedure, it is Ordered that:

1. The parties hereto agree upon a stipulation with respect to certain undisputed facts as follows:
 - a. This Court's jurisdiction of this action under section 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 217) (hereinafter referred to as the Act) is not disputed.
 - b. Defendants have been since August 26, 1966, and are now actively engaged in the control and supervision of the operations of Drucker & Falk, 131 - 26th Street, Newport News, Virginia, in the business of selling real estate and insurance and managing rental property.
 - c. Defendants, at all times since August 25, 1966, have acted directly and indirectly in the interest of Drucker & Falk in relation to its employees.
 - d. At all times since August 25, 1966, at least two of defendants' employees at their main office at 131 - 26th Street, Newport News, Virginia, have been engaged in handling, preparing, mailing, or otherwise working on insurance policies or other materials for transmission across state lines to each of the following insurance companies: American Casualty Company, Reading, Pennsylvania; Kemper Insurance Company, Summit, New Jersey; Central Mutual Insurance Company, Van Wert, Ohio; and Pawtucket Mutual Insurance Company, Pawtucket, Rhode Island.

- e. As a regular incident of their management of rental property, employees at the buildings managed by defendants repair plumbing, heating, and air conditioning units.
- f. Substantial portions of the materials mentioned in (e) above moved across state lines.
- g. Defendants manage and since August 25, 1966, have managed (among other buildings) the Robin Hood Apartments, 5500 Robin Hood Road, Norfolk, Virginia; the Plaza Apartments, 124 Palm Beach Place, Virginia Beach, Virginia; and the Sewell, 400 West Little Creek Road, Norfolk, Virginia.
- h. At least one of the employees at each of the buildings specified in (g) above are and since August 25, 1966, has been regularly engaged in telephone and mail communications across state lines concerning the operation of the buildings with the owners of the buildings.
- i. For the period since the first quarter of 1966, the gross receipts for rentals and other fees or charges collected by employees in the buildings from the tenants of the various buildings which defendants manage has been in excess of \$1,000,000 each year.
- j. The rents collected from the tenants of Robin Hood Apartments have been in excess of \$1,000,000 per year during the period since January 30, 1967.
- k. Defendants have considered the employees at Robin Hood Apartments, 5500 Robin Hood Road, Norfolk, Virginia, to be covered by the provisions of the Fair Labor Standards Act of 1938, as

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amended by the Fair Labor Standards Amendments of 1961 (75 Stat. 65) and have accordingly compensated such employees at the rates prescribed by those amendments.

- I. With respect to defendants' management of rental property, defendants perform the following functions:
 - (a) Hiring project manager at project.
 - (b) Firing project manager at project.
 - (c) Indirectly supervising the employees who work at the buildings.
 - (d) Advertising for tenants to occupy the buildings.
 - (e) Making payments of utility bills for the buildings out of project owner's account.
 - (f) Making mortgage payments where applicable out of project owner's account.
- m. (omitted)
- n. P/T Ex. #3 is a newspaper advertisement for apartment buildings managed by defendants. This advertisement is typical of defendants' advertising for tenants at the buildings which they manage.
- o. The apartment projects belong to parties other than the defendants and are managed under a management contract which provides that employees of the project shall be employees of the owners and rental payments as received are deposited in an in and out account on behalf of the owner and expenses are paid out of this account with the balance distributed immediately after receipt. Ownership remains with the owner and not the defendants and contractual arrangement is one of owner and rental

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agent. Employees are credited on defendants' books as employees of the particular project with each project having a project manager and sufficient other employees to handle rental, collections and repair work except contract repair work.

- p. Employees at each building perform the following functions under the direction of the project manager:
- (1) Renting the apartments in the building.
 - (2) Collecting the rents from the tenants.
 - (3) Making repairs at the buildings.
 - (4) Arranging with persons, other than the owners of the buildings, to have repairs made at the buildings.

2. (a) The parties hereto agree that the following exhibits, identified by the initials of counsel, may be introduced in evidence without the necessity of further proof:

P/T Ex. #1 Plaintiff's Discovery and Answers.

P/T Ex. #2 Schedule of back wages.

P/T Ex. #3 Advertisement.

- (b) Defendant's Exhibit #1 will be copy of typical management contract.

3. (omitted)

4. (a) The factual contention of the plaintiff is that the employees at the buildings managed by defendants are employees of defendants.

- (b) The factual contention of the defendant is that the projects managed by the defendant are owned by a multitude of parties who are unrelated to one another and that the employees are employees of the particular project car-

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ried on their payrolls and paid by them out of their trust funds. Management of the apartment projects varies and the employees go with the managed apartments. Employees are handled as employees of the apartment owners. Payrolls, etc., are so handled. Relationship of the employees is as employees of the project owner.

5. (a) The triable issues as contended by the plaintiff are:

- (1) Whether the activities of the defendants in selling real estate and insurance and managing rental property constitute an enterprise within the meaning of section 3(r) of the Act.
 - (2) Whether defendants' business activities constitute an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the Act, as amended by the Fair Labor Standards Amendments of 1966 (80 Stat. 830).
 - (3) Whether the employees at the buildings managed by defendants are defendants' employees within the meaning of sections 3(d), (e), and (g) of the Act.
 - (4) Whether plaintiff is entitled to an order restraining the further withholding of back wages due to their employees under the Act.
 - (5) Whether plaintiff is entitled to prejudgment interest on the sums which defendants withheld as unpaid minimum wages and overtime compensation from their employees.
- (b) The triable issues as contended by the defendant are:

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- (1) Whether Drucker & Falk is an enterprise as defined by the 1961 amendments to the Act or by the 1966 amendments to the Act.
- (2) Whether Drucker & Falk is engaged in commerce or in the production of goods for commerce within the meaning of those terms as defined by the Fair Labor Standards Act.
- (3) Whether the defendant Drucker & Falk is an "employer" of the "building employees" at the various apartment projects within the meaning of the Act.
- (4) Whether the "annual gross volume of sales made or business done" by Drucker & Falk for its management activities is measured by gross rentals or by commissions received.
- (5) Whether the plaintiff is entitled to the injunctive relief requested and/or interest thereon.

Pre-Trial Exhibit #2

The following sheets contain a schedule of back wages computed for the period from January 30, 1967 to January 30, 1969. The total back wages amount to \$27,286.44.

(list of names, addresses, period covered, and amounts due—omitted)

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Pre-Trial Exhibit #3

Reprint from Newport News Daily Press,
May 2, 1968

**THAT'S US
ALL OVER**

(Map Omitted)

SOUTHHAMPTON APARTMENTS

1 Bedroom Apt.
\$74 and \$77

2 Bedroom Apt.
\$80 and \$85

- Heat and Hot Water
- Swimming Pool

3816 Kecoughtan Road
9-5 Mon. Thru Sat.

Phone PA 2-6363

LAKESHORE APARTMENTS
TOWNHOUSE AND GARDEN
APARTMENTS

*The Address of the Peninsula's
Most Fashionable People*

- Townhouse Privacy ● Swimming Pool
- Hospitality House ● Dishwashers ● Nursery
- Individually Controlled Air Conditioning

(All Utilities Included)

DIRECTIONS: Drive out Mercury Blvd. to Todds Lane. Turn north to Lakeshore Village. HOURS: Daily 11 a.m.-5 p.m. Sunday, 1 p.m. 5 p.m. Anytime by appointment. 838-0923.

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HOME

2

SIZED

KITCHEN

Washer Connections

Presidential

APARTMENTS

1, 2, and 3 Bedrooms

- Elementary School

All utilities included

- Elementary School

Across the Street

- Swimming Pool

616 Dresden Drive

Phone 595-3351

9 'till 5 Mon. thru Sat.

BEDROOMS

\$135

The IVY

- All Utilities Included

- Individually Controlled Heat and Air Conditioning

- Large Closets and Bulk Storage

- Washing Machine Connections

- Playground and

Swimming Pool

616 Dresden Drive

Phone 595-3351

9 'till 5 Mon. thru Sat.

DRUCKER & FALK

where Red Carpet Service is Our Objective

131 26th St. — 245-1541

IMMEDIATE OCCUPANCY

MERCURY WEST

2 Bedrooms From \$125

Including All Utilities

Mercury Blvd. - Pennwood Dr.

HOURS: 11 a.m.-5 p.m.

Mon. Thru Sat.

Drucker & Falk

1601 Pennwood Dr. 826-6270

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(Caption Omitted)

STIPULATION OF FACTS

(Filed in U. S. District Court October 9, 1969)

The parties stipulate that:

1. This stipulation supplements and clarifies the stipulation of undisputed facts contained in the order on final pretrial conference entered on September 5, 1969. Both stipulations may be introduced in evidence in this action.
2. Drucker & Falk, defendants, is a partnership engaged in the real estate and insurance business and, as part of its function, manages apartment projects for a commission of rentals. As such, Drucker & Falk manages approximately 30 projects and does so under agency contracts, sample copy of which is part of the Exhibits in this matter.

(a) The agency contract employs the defendants to manage the projects and to either furnish services in and about renting, collecting rents and managing the properties of the owner or, in the alternative, for the defendants to furnish only supervision of these activities, with the owners bearing all expense for on site clerical and leasing personnel. In either case in every instance it is specifically agreed in the contract that management does not include the expense of operating and maintaining the property and the agreement specifically provides that all such employees dealing with operating and maintaining the property shall be the employees of the owner. The plaintiff contends, and defendants deny, that the employees are in fact employees of the defendants within the meaning of Section 3(d), (e) and (g) of the Fair Labor Standards Act.

(i) Breakdown where services or supervision is furnished is shown on Appendix A.

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2(b) The defendants feel their function is to advise the owners as to its recommendations to establish the major policy decisions by which the project is to be operated and to thereby establish the long range maintenance, modernization and major replacement programs which are designed over a period of years to insure that the project maintains its competitive position so as to prolong life of the project at its highest and best use, producing the highest reasonable stabilized net cash flow from the property to the owner.

2(c) All rental receipts are collected for the owners and deposited in a trust account separate from the defendants' personal account. Such accounts may be and are commingled in one trust account maintained by agent for all clients or properties managed by the defendants.

2(d) The agent renders monthly or at agreed times statements of receipts, expenses and charges and remits receipts less disbursements to the owners. In the event that disbursements are in excess of rents collected by the agent, owners are required to pay to agent such excess amount.

2(e) Defendants in their agreement with owners agree to supervise advertising and to rent and collect rents or to supervise these functions, and to stand in the shoes of the owner in this connection.

2(f) In connection with repairs, maintenance, and alterations, defendants have agreed to supervise such and have in this connection agreed to submit for approval a written budget for stipulated periods and no expenditures may be made under such budget except with specific approval of the owner. Such approval covers all cost of maintenance and repair, including wage costs.

2(g) For such services, and, where specified, for the use of defendants' employees in rental and clerical services, the

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project owner pays a specific percentage of the rental on the income of the project. The arrangement between the parties is for a specific period, not less than one year, with the right for either party to terminate the relationship. There is no relationship of contract period between any one of the projects and another.

2(h) In each instance the repair and maintenance employees are carried on the books of the project owner as employees of the project owner and the project owner carries a separate employer identification number for income tax purposes.

2(i) The annual gross income of the individual projects in which employees in question are employed is not sufficient to bring such employees within the enterprise provisions of the Act until February 1, 1969.

2(j) Maintenance employees employed at projects may work on goods passing through interstate commerce but the specific employees doing such work or the amount thereof or frequency thereof is not known and would not bring the employees within the coverage of the Act except should they be considered employees of Drucker & Falk under the enterprise theory.

3. Although there are some minor variations from project to project, defendants' practice in managing the apartment projects is as follows:

3(a) The defendants differentiate between the management and rental function and the function of maintenance and upkeep of the apartment projects. Management and rental employees are, where specified, carried on the payroll of the defendants, whereas, maintenance and upkeep employees are in all cases carried as employees of the project owners.

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3(b) The defendants in their real estate business have a management department charged with managing apartments which department is headed by one of the defendants as Executive Director of the Management Department. Under him, all on Drucker & Falk's payroll and not involved in this suit, are an Assistant Director and six Area Managers who are responsible for supervising and enforcing management policies at a number of projects normally within a given area. One of these individuals supervises only one project, but he is on a semi-retired basis.

3(c) Where so specified, rental agents and various clerical employees, carried on defendants' central payroll, work on the premises of the projects, collect rents, operate the rental office, take tenant complaints and keep the office records. These employees at each project deposit the rent and other receipts collected for the project in a customers account under the name of Drucker & Falk as agent in the bank closest to that location. Subsequently, these funds are withdrawn and deposited in a central customers trust account for all managed properties maintained at Citizens and Marine/United Virginia Bank, in the name of Drucker & Falk as Agents and designated as a customers account. The first mentioned account generally has a number and/or name which identifies the specific project. These employees send the collection information, bank deposit receipts and other records to defendants' central office. They are hired, fired and directly supervised by officials of defendants.

3(d) Each apartment project has a person in charge who is called "Project Manager" or "Maintenance Superintendent", depending upon the size of the project. These individuals are directly responsible for the maintenance and upkeep of the project and are directly supervised by the Area Manager or other officers of the defendants as agents for the project owner, and salaries for these individuals are

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set in accordance with semi-annual budget which is approved by the project owner.

The Project Manager, or Maintenance Superintendent, is a person who has the capacity to make normal day-to-day decisions and to do the day-to-day physical operation, maintenance, repair and upkeep of the project. He is expected to make appropriate decisions as to the necessity for painting, redecorating and the extent of repair or replacement of damaged equipment.

The average pay of the Project Manager is \$125 per week with apartment and utilities furnished in addition to the weekly salary. He is in charge of each project and hires, fires and supervises the maintenance employees of the project. The Project Manager or Maintenance Superintendent is carried as an employee of the project owner as well as the employees supervised by him. The Maintenance Superintendent keeps the records of hours worked each week by the maintenance employees and submits the records directly to defendants central office where the payroll for the project is made up for the account of each owner. The maintenance superintendent and maintenance employees of the project are paid by defendants' checks which are prepared by defendants' central office employees and signed by one of the defendants acting on behalf of their principals. The checks are drawn on a special payroll bank account kept by the defendants for all projects. The funds in this special payroll account are drawn from a central management customers account covering all projects in the amount required to meet the overall payroll, with each project owner being charged his exact payroll amount. The funds in this central customers account are the rents and other receipts which the rental agent deposits in the account as described in section (c) of this paragraph.

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3. (e) The Project Manager or Maintenance Superintendent submits a semi-annual budget request to the Area Manager and higher supervisory officials in defendants' organization. Defendants' officials review and revise the budget and present it, with their recommendation, to the project owner for approval. The maintenance superintendent does not normally discuss the formal budget with the owner. However, the owner normally inspects the property on at least a semi-annual basis and discusses the project needs with the maintenance superintendent. This inspection is normally conducted just prior to the presentation of the budget request for the following period. The budget as it is approved by the owner is sent to the maintenance superintendent by the Area Manager or other Drucker & Falk officials. Generally, the budget places specific allowances for maintenance costs such as payroll, painting, grounds maintenance, plumbing, equipment repair, appliance replacement, etc. Within the limits of the budget the superintendent sets the hours of work and wage rates of the maintenance employees. The Area Managers and higher supervisory officials in defendants' organization have but rarely exercise a veto over the decision of the superintendents with respect to hiring, firing and setting wage rates. The superintendents are fairly autonomous because of their demonstrated good judgment and performance.

3. (f) Each maintenance superintendent receives bills for goods and services which he orders for the project and he sends the bills to defendants' central office with a voucher requesting payment. Defendants' central office employees pay the bills by checks drawn on the central customers account described in section (c) of this paragraph. The checks are signed by one of the defendants.

4. (a) The owners of the projects inspect their projects from time to time. Some of the owners inspect the projects

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once a month; other owners inspect their projects twice a year, generally in advance of budget consideration. When they visit the projects, the owners are primarily concerned with the physical condition of the premises, vacancies, and tenant complaints. They do not make suggestions to the employees at the project with respect to the wages, hours or supervision of the maintenance employees; such suggestions are made as a matter of policy directly to their agents, the defendants.

4. (b) The maintenance superintendents are in a position to know, but may not know, who the owners of the project are. Most of the maintenance superintendents know who the owners are and know that their wages are ultimately paid by the owner out of rents for the project. While they may talk to the owners occasionally about the project, the superintendents look to the defendants for supervision and direction.

4. (c) Over a period of the last six or seven years, there have been a maximum of five maintenance personnel assigned by the defendants from one project to another project owned by an entirely different owner. In each instance this was moving a maintenance employee to a maintenance superintendent job or moving a maintenance superintendent to a larger project. In all cases, this was accomplished with the knowledge of the owners. Such transfers were arranged by officials of the defendants.

4. (d) Over the last five years, defendants have lost the agency contract at 8 projects belonging to various owners employing approximately 35 people. Of this total, defendants offered a job to two persons employed by these projects. Neither of these employees came with the defendants and in each instance the employees continued working at the project and were employed by the owners.

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5. (a) Most projects managed by the defendants have an office, storage area, or other central facility from which the project is managed. Some of the smaller projects do not have such facilities. The maintenance work at these smaller projects is performed by employees and equipment from other projects managed by defendants. The use of these employees is only after approval of the owner of both projects and the smaller project is charged with the labor, which is credited to the larger project. The larger project normally agrees because of the economic advantage of being able to employ a half employee when a full time employee is not needed.

5. (b) Some of the maintenance superintendents and employees are carried on two separate payrolls of projects owned by entirely different owners where the projects are located in close geographic proximity and where the maintenance services to be rendered have identical objectives for both owners in order to permit economy of operation. In all instances, this is accomplished with the approval of both owners. Where the project owner has its own separate maintenance crew but shares the services of one or two employees, these shared employees receive two separate checks, one from each project account. In other instances, where there is one or more large project and one or more small project which do not have an independent maintenance crew, the maintenance personnel are carried by the larger project and provide maintenance service to the smaller project; in this instance, the shared employees are paid by one check from one account and the defendants maintain an internal accounting procedure so that the other project may be charged with that part of the employees' wages utilized by the smaller project.

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5. (c) Except in the cases provided in section (b) above, all employees work solely at the project where they are employed.
6. Some of the projects where the employees involved are employed are no longer managed by the defendants.
7. None of the projects managed by defendants except Robin Hood had a total rental income in excess of the \$1,000,000 annual figure set by Congress as criteria for being an enterprise engaged in commerce or in the production of goods for commerce. In this instance, the employees of the project were paid rates in accordance with the Fair Labor Standards Act. Some of the projects managed by the defendants have total rental income in excess of \$250,000. Defendants have agreed to pay employees in those projects in accordance with the Act beginning February 1, 1969, the date on which the dollar volume test was reduced to \$250,000 under Section 3(s)(1) of the Act.

8. For a period of approximately one year prior to the enactment of the 1966 amendments to the Fair Labor Standards Act in September 1966, the Department of Labor did not take vigorous action to enforce the Act with respect to the activities of apartment house management companies. This absence of action was due to a thorough study of the applicability of the enterprise provisions of the Act to those activities. Some investigations were made during the period but no enforcement action was instituted in court. Subsequent to the enactment of the 1966 amendments, the Department re-asserted its position that the activities came within the enterprise provisions of the Act and began scheduling investigations in a concerted enforcement effort shortly after February 1, 1967, the effective date of the 1966 amendments. The investigation that lead to this law suit was started on August 26, 1968. At the final conference on

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October 22, 1968, E. E. Falk, one of the defendants and a partner of the other defendants, told Mr. Earl Hawthorne, the Wage-Hour Investigator that he was aware of the Department's position that all of the apartment projects managed by the defendants comprised one enterprise and that all employees in the projects were covered by the enterprise provisions of the Act. Mr. Falk stated, however, that defendants contested the Department's position and had contributed a substantial sum of money to the National Association of Real Estate Board to help in the defense of *Wirtz v. Arnheim & Neeley, Inc.*, a similar case brought by the Secretary of Labor in Pittsburgh, Pennsylvania. That suit was filed in October, 1967. On instruction from the Association, Mr. Falk refused to make any settlement or concessions on the enterprise issue. He agreed to comply with respect to employees in those projects which were considered enterprises standing alone.

JONES, BLECHMAN,
WOLTZ & KELLY
Attorneys for Defendants

By HERBERT V. KELLY

WILLIAM H. HORKAN
Deputy Chief Trial Attorney

THOMAS E. KORSON
Attorney

Attorneys for Plaintiff
United States Department of Labor

Of Counsel

BRIAN P. GETTINGS
United States Attorney

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APPENDIX A

	<u>1966</u>	<u>1967</u>	<u>1968</u>
Gross rental collected where rental employees furnished by Drucker & Faulk	\$5,670,030.13	\$6,170,728.41	\$6,026,908.97
Gross rental collected where rental employees furnished by Owner	\$ 141,589.24	\$1,554,872.45	\$2,580,177.07

Projects where leasing personnel on Owner's payroll:

Plaza	Lakeshore Village
Robin Hood	Victory Gardens
Lakeshore Association	Newsome I and II
Hampton Association	

Management Agreements used for two methods of rentals
are attached as Exhibits A and B.

"Exhibit A"

MANAGEMENT AGREEMENT

Agreement made this day
of , 19.... between
..... ; ;
..... ; ;
all hereinafter designated as
"Owners", and Drucker & Falk,
hereinafter designated "Agent".

Witnesseth:

In consideration of the mutual promises and covenants
herein contained, Owners and Agent agree as follows:

ARTICLE I

Owners hereby employ and appoint Agent as the sole and exclusive renting and management agent to rent, lease, operate, and manage the Owner's property known as upon the terms hereinafter set forth.

ARTICLE II

(a) Agent accepts the employment and appointment and agrees to use due diligence in the management of the premises upon the terms herein provided, and agrees to furnish the services of his organization for the establishment of marketing and operating policies, programs and procedures, the provision of accounting and budgetary services, and the provision of close supervision of the implementation of policies and programs established for the renting, leasing, collection of rents, and managing of Owner's property described herein. It is understood that except as provided in this Article, "management" does not include any expenses of advertising, marketing, renting, leasing, operating or maintaining the premises.

(b) Agent agrees to deposit all receipts collected for Owners in a Trust Account, separate from Agent's personal account. Such receipts may be co-mingled in one trust account maintained by Agent for all or several clients or properties managed by Agent. Agent agrees that upon special request of Owners, a separate rate trust account for subject property will be established and maintained. It is agreed that Agent will not be held liable in the event of bankruptcy or failure of any depository.

(c) Agent agrees to render monthly, or at such other reasonable intervals as Owners and Agent may agree upon, statements of receipts, expenses and charges, and to remit to

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Owners receipts less disbursements. In the event that the disbursements shall be in excess of the rents collected by Agent, Owners agree to pay to Agent such excess promptly upon demand.

(d) Agent's employees who handle or are responsible for Owner's monies shall be bonded by a fidelity bond.

ARTICLE III

Agent agrees to provide the services of his organization to provide diligent and proper supervision of the execution of the following authority and powers which Owner hereby confers upon Agent, all expenses for which Owners agree to assume.

(a) To advertise the availability for rental of subject property or any part thereof and to display signs thereon; to sign, renew and/or cancel leases for the premises or any part thereof; to collect rents due or to become due and to issue receipts therefore; to terminate tenancies and to sign and serve in the name of Owners such notices as Agent deems needful; to institute and prosecute actions to evict tenants and recover possession of said premises; to sue for, in the name of OWNERS, and recover rents and other sums due; and, when expedient, to settle, compromise, and release such actions or suits or reinstate such tenancies. Any leases executed for the OWNER by the Agent shall not exceed one (1) year.

(b) To make or cause to be made and supervise repairs and alterations, and to do decorating on said premises, and to purchase supplies and pay all bills. In this connection, beginning , 19...., Agent will submit to Owners for their prior approval a written budget for stipulated periods as agreed upon. Agent agrees to secure the

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approval of Owners on all expenditures in excess of ten (10) per cent over an approved budget, except that Agent is authorized to expend funds pending budget approval for monthly recurring operation expenses at a rate not in excess of that approved in the prior budget period. Agent is also authorized to expend funds for unbudgeted emergency repairs, if in the opinion of Agent such repairs are necessary to protect the property from damage or to maintain required services to tenants.

(c) Subject to budget approval as set forth in paragraph (b) above, to hire, discharge and supervise all labor and employees required for the operation and maintenance of the premises, with all employees deemed employees of Owners. Agent may perform any of his duties through Owner's attorneys, agents, and employees and shall not be responsible for their acts, defaults, or negligence if reasonable care has been exercised in their appointment and retention.

(d) Subject to budget approval as set forth in paragraph (b) above, to make contracts for electricity, gas, fuel, water, telephone, window cleaning, ash or rubbish removal, decorating, repair, and other services or such of them as Agent shall deem advisable. Owners shall assume the obligation of any such contract entered into for their benefit, including any such obligation which may extend beyond any termination of this agreement.

ARTICLE IV

(a) Owners agree to hold and save Agent free and harmless from damages or injuries to person or property by reason of any cause whatsoever either in or about the premises or elsewhere arising out of Agent's management of subject property.

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(b) Owners agree to carry public liability insurance with limits not less than \$300,000 which policy(ies) shall be so written as to expressly name Agent as a co-insured, covering Agent in the same manner and to the same extent as Owners, memorandum copies of which shall be delivered to Agent. Owners shall carry adequate workmen's compensation insurance and such other insurance as may be necessary for the protection of the interest of Owners.

(c) Agent shall not be liable for any error of judgment or any mistake of fact or law; Agent shall be liable only for such actions or failure to act as constitute wilful misconduct or gross negligence.

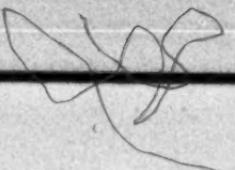
(d) If Owners shall fail or refuse to comply with or abide by any rule, order, determination, ordinance, or law of any Federal, State or Municipal Authority, Agent upon giving twenty-four (24) hours written notice may terminate this Agreement.

ARTICLE V

Owners will advise Agent in the event Owners desire Agent to pay mortgage indebtedness, property or employee taxes, special assessments, or to place insurance and pay premiums upon fire, liability, steam boiler, pressure vessel, or any other insurance. As to any such payments to be made by the Agent, Agent is directed to accrue such sums on a monthly basis from the Owner's funds if necessary to assure sufficient funds on hand by the date payment becomes due and to pay same.

ARTICLE VI

Agent is clothed with such other general authority and powers as may be necessary or advisable to carry out the spirit and intent of this Agreement.



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Owners agree to pay Agent monthly as compensation for his services, a management fee equal to four (4%) per cent upon all rents collected for said property, or such other rate as may be fixed from time to time for like services by the Newport News-Hampton Real Estate Board; provided however that any such rate increase shall go into effect only after expiration of thirty (30) days subsequent to the Agent notifying the Owners of his intention to place into effect such rate increases; and provide further that if such rate increase is unacceptable to Owners, and Agent is unwilling to continue management at the existing rate, Owners may terminate this agreement and Agency without penalty upon thirty (30) days notice to this effect to Agent.

ARTICLE VIII

(a) This agreement shall become effective when executed for an original term ending on the day of, 19.....

(b) Thereafter, this contract shall be automatically renewed for periods of one year unless on or before sixty (60) days prior to the day of, 19...., or on or before thirty (30) days prior to the expiration of any such renewal period, either party hereto shall notify the other in writing at the address hereinafter set forth of an intention to terminate this agreement, in which case this agreement may be terminated.

(c) Subject to the provisions of paragraph (d) in this Article, on or after, 19...., either party may terminate this agreement at any time without penalty upon giving thirty (30) days written notice.

(d) Should this agreement be terminated in any fashion by Owners during the original term (except in the case of

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termination for wilful misconduct or gross negligence of Agent), Owners agree to pay the Agent as compensation for his past efforts, for a period of twelve (12) months following termination, that monthly sum which equals the amount which would have been the management fee except for such termination.

(e) Anything in this Article to the contrary notwithstanding, Owners may upon thirty (30) days notice terminate this agreement without penalty in the event of wilful misconduct or gross negligence of Agent in the management of said property. In the event of dispute as to the existence of wilful misconduct or gross negligence, the matter shall be submitted to arbitration. Owners and Agent shall each select an arbitrator, and a third shall be chosen by the two thus designated; and if they fail to select the third within ten (10) days after their selection, such third arbitrator shall be selected by the Judge of the Circuit Court of Newport News, Virginia. The arbitrators shall examine all relevant facts and reach a determination. A determination signed by any two arbitrators shall determine the dispute and shall be binding upon Owners and Agents. Costs of arbitration shall be borne by the party against whom the determination is made.

This Agreement shall be binding upon the parties hereto, the heirs, administrators, executors, successors and assigns of Owners, and the successors and assigns of Agent.

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In Witness Whereof, the parties hereto have executed this Agreement, consisting of five (5) pages, and have affixed or caused to be affixed their respective signatures and have affixed their seals this day of , 19.....

**Drucker & Falk
131 - 26th Street
Newport News, Virginia**

.....
.....
.....
**By: (Seal)
Partner**

..... (Seal)

..... (Seal)

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"Exhibit B"

MANAGEMENT AGREEMENT

.....
Agreement made this
day of , 19 be-
tween

..... ; ;
..... ; ;
all hereinafter designated as
"Owners", and Drucker &
Falk, hereinafter designated
"Agent".

Witnesseth:

In consideration of the mutual promises and covenants
herein contained, Owners and Agent agree as follows:

Article I

Owners hereby employ and appoint Agent as the sole
and exclusive renting and management agent to rent, lease,
operate, and manage the Owners property known as
..... upon the terms hereinafter set forth.

Article II

(a) Agent accepts the employment and appointment and
agrees to use due diligence in the management of the pre-
mises upon the terms herein provided, and agrees to furnish
the services of his organization for the renting, leasing, col-
lection of rents, and managing of Owners property de-

scribed herein. It is understood that except as provided in this Article, "management" does not include any expenses of operating and maintaining the premises.

(b) Agent agrees to deposit all receipts collected for Owners in a Trust Account, separate from Agent's personal account. Such receipts may be co-mingled in one trust account maintained by Agent for all or several clients or properties managed by Agent. Agent agrees that upon special request of Owners, a separate trust account for subject property will be established and maintained. It is agreed that Agent will not be held liable in the event of bankruptcy or failure of any depository.

(c) Agent agrees to render monthly, or at such other reasonable intervals as Owners and Agent may agree upon, statements of receipts, expenses and charges, and to remit to Owners receipts less disbursements. In the event that the disbursements shall be in excess of the rents collected by Agent, Owners agree to pay to Agent such excess promptly, upon demand.

(d) Agents employees who handle or are responsible for Owners' monies shall be bonded by a fidelity bond.

(e) Agent agrees to contribute toward actual annual expenditure for advertising a sum not to exceed ten (10) per cent of the management fee received in that year.

Article III

Agent agrees to provide the services of his organization to provide diligent and proper supervision of the execution of the following authority and powers which Owner hereby confers upon Agent, all expenses for which Owners agree to assume (except as provided in Article II (e) with regard to advertising):

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(a) To advertise the availability for rental of subject property for any part thereof and to display signs thereon; to sign, renew and/or cancel leases for the premises or any part thereof; to collect rents due or to become due and to issue receipts therefore; to terminate tenancies and to sign and serve in the name of Owners such notices as Agent deems needful; to institute and prosecute actions to evict tenants and recover possession of said premises; to sue for, in the name of Owners, and recover rents and other sums due; and, when expedient, to settle, compromise, and release such actions or suits or reinstate such tenancies. Any leases executed for the Owner by the Agent shall not exceed one (1) year.

(b) To make or cause to be made and supervise repairs and alterations, and to do decorating on said premises, and to purchase supplies and pay all bills. In this connection, Agent shall submit to Owners for their prior approval a written budget for stipulated periods as agreed upon. Agent agrees to secure the approval of Owners on all expenditures in excess of ten (10) per cent over an approved budget, except that Agent is authorized to expend funds pending budget approval for monthly recurring operation expenses at a rate not in excess of that approved in the prior budget period. Agent is also authorized to expend funds for unbudgeted emergency repairs; if in the opinion of Agent such repairs are necessary to protect the property from damage or to maintain required services to tenants.

(c) Subject to budget approval as set forth in paragraph (b) above, to hire, discharge and supervise all labor and employees required for the operation and maintenance of the premises, with all employees deemed employees of Owners. Agent may perform any of his duties through Owners attorneys, agents, and employees and shall be responsible

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for their acts, defaults, or negligence if reasonable care has been exercised in their appointment and retention.

(d) Subject to budget approval as set forth in paragraph (b) above, to make contracts for electricity, gas, fuel, water, telephone, window cleaning, ash or rubbish removal, decorating, repair, and other services or such of them as Agent shall deem advisable. Owners shall assume the obligation of any such contract entered into for their benefit, including any such obligation which may extend beyond any termination of this agreement.

Article IV

(a) Owners agree to hold and save Agent free and harmless from damages or injuries to person or property by reason of any cause whatsoever either in or about the premises or elsewhere arising out of Agent's management of subject property.

(b) Owners agree to carry public liability insurance with limits not less than \$300,000 which policy(ies) shall be so written as to expressly name Agent as a co-insured, covering Agent in the same manner and to the same extent as Owners, memorandum copies of which shall be delivered to Agent. Owners shall carry adequate workmen's compensation insurance and such other insurance as may be necessary for the protection of the interest of Owners.

(c) Agent shall not be liable for any error of judgment or any mistake of fact or law; Agent shall be liable only for such actions or failure to act as constitutes willful misconduct or gross negligence.

(d) If Owners shall fail or refuse to comply with or abide by any rule, order, determination, ordinance, or law of any

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Federal, State or Municipal Authority, Agent upon giving twenty-four (24) hours written notice may terminate this Agreement.

Article V

Owners will advise Agent in the event Owners desire Agent to pay mortgage indebtedness, property or employee taxes, special assessments, or to place insurance and pay premiums upon fire, liability, steam boiler, pressure vessel, or any other insurance. As to any such payments to be made by the Agent, Agent is directed to accrue such sums on a monthly basis from the Owners funds if necessary to assure sufficient funds on hand by the date payment becomes due and to pay same.

Article VI

Agent is clothed with such other general authority and powers as may be necessary or advisable to carry out the spirit and intent of this Agreement.

Article VII

Owners agree to pay Agent monthly as compensation for his services, a management fee equal to six (6) per cent upon all rents collected for said property, or such other rate as may be fixed from time to time for like services by the Newport News-Hampton Real Estate Board; provided however that any such rate increase shall go into effect only after the expiration of thirty (30) days subsequent to the Agent notifying the Owners of his intention to place into effect such rate increases; and provide further that if such rate increases is unacceptable to Owners, and Agent is unwilling to continue management at the existing rate, Own-

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ers may terminate this agreement and Agency without penalty upon thirty (30) days notice to this effect to Agent.

Article VIII

(a) This agreement shall become effective when executed for an original term ending on the day of , 19.....

(b) Thereafter, this contract shall be automatically renewed for periods of one year unless on or before sixty (60) days prior to the day of , 19...., or on or before thirty (30) days prior to the expiration of any such renewal period, either party hereto shall notify the other in writing at the address hereinafter set forth of an intention to terminate this agreement, in which case this agreement may be terminated.

(c) Subject to the provisions of paragraph (d) in this Article, on or after , 19, either party may terminate this agreement at any time without penalty upon giving thirty (30) days written notice.

(d) Should this agreement be terminated in any fashion by Owners during the original term (except in the case of termination for willful misconduct or gross negligence of Agent), Owners agree to pay the Agent as compensation for his past efforts, for a period of twelve (12) months following termination, that monthly sum which equals the amount which would have been the management fee except for such termination.

(e) Anything in this Article to the contrary notwithstanding, Owners may upon thirty (30) days notice terminate this agreement without penalty in the event of willful misconduct or gross negligence of Agent in the management

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of said property. In the event of dispute as to the existence of willful misconduct or gross negligence, the matter shall be submitted to arbitration. Owners and Agent shall each select an arbitrator, and a third shall be chosen by the two thus designated; and if they fail to select the third within ten (10) days after their selection, such third arbitrator shall be selected by the Judge of the Circuit Court of Newport News, Virginia. The arbitrators shall examine all relevant facts and reach a determination. A determination signed by any two arbitrators shall determine the dispute and shall be binding upon Owners and Agents. Costs of arbitration shall be borne by the party against whom the determination is made.

This Agreement shall be binding upon the parties hereto, the heirs, administrators, executors, successors and assigns of Owners, and the successors and assigns of Agent.

In Witness Whereof, the parties hereto have executed this Agreement, consisting of five (5) pages, and have affixed or caused to be affixed their respective signatures and have affixed their seals this day of , 19.....

Drucker & Falk
131 26th Street
Newport News, Virginia

.....
.....
.....
By: (Seal)
Partner

.....
(Seal)

.....
(Seal)

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ORDER ALLOWING CERTIORARI

Supreme Court of the United States

October Term, 1972

No. 72-844

**E. E. FALK, INDIVIDUALLY AND AS PARTNER IN
DRUCKER & FALK, ET ALs.,**

Petitioners,

v.

**PETER J. BRENNAN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,**

Respondent.

February 26, 1973. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit granted limited to Questions 2 and 3 presented by the petition which read as follows:

"2. Under the Fair Labor Standards Act to be covered an enterprise must have an 'annual gross volume of sales made or business done' of \$500,000. Is this figure to be measured by the gross rentals collected by the agent or by that agent's gross commissions?

"3. Are maintenance workers employed at the buildings managed by petitioners employees of the apartment owner or of the petitioners?"